

IN THE MATTER OF ~~ALFRED POPWELL~~ ~~AND~~ ~~ALL OTHERS~~ ~~SHAMANS~~ ~~AND~~ ~~OTHERS~~ ~~DOCUMENT~~

Issued to: ALFRED POPWELL

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1618

ALFRED POPWELL

This appeal has been taken in accordance with Title 46 United States Code 239, and Title 46 Code of Federal Regulations 137.30-1.

By order dated 14 October 1966, an Examiner of the United States Coast Guard at New York City, New York revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specifications found proved allege that while serving as a Radio Officer on board the United States SS WELLESLEY VICTORY under authority of the license above described, at various times between 2 November 1965 and 14 January 1966, Appellant wrongfully; threatened to inflict bodily harm to various shipmates on four separate occasions; assaulted and battered an unlicensed member of the crew; incited various unlicensed personnel to disobey orders; urged various unlicensed personnel to submit false overtime claims; had intoxicating beverages in his possession; and conducted himself in a manner unbecoming an officer by drinking intoxicants on board in the presence of unlicensed personnel.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the direct testimony of two witnesses, and written depositions from other witnesses. Appellant submitted cross-interrogatories, the answers to which were also introduced.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and before-mentioned specifications had been proved. The Examiner then served a written order on Appellant revoking all documents issued to him.

The entire decision and order was served on 19 October 1966. Appeal was timely filed on 3 November 1966.

FINDINGS OF FACT

From 2 November 1965 to 14 January 1966, among other dates, Appellant was serving as a Radio Officer on board the United States SS WELLESLEY VICTORY and acting under authority

of his license.

On 24 November 1965, Second Officer Klafert went to the radio room to give Appellant a message to send out. Appellant accepted the message, then suddenly turned around and told Mr. Klafert he had a beating coming to him and that Appellant was going to give it.

On 29 November 1965, Third Officer , McLaughlin had returned from a shopping excursion in the port city of Yokhoma, Japan, and was waiting on the dock for the liberty launch. Appellant and a third man, crewman Pope, were also on the dock. At this point Appellant turned to Pope and said, "If that Third Mate comes near me, I'll kill him". Since Mr. McLaughlin was the only other person in the vicinity of Appellant and Pope, and because he was a Third Mate, he regarded the statement as a threat to his life and was quite upset about it.

On 26 December 1965, Third Officer Kahler and Chief Officer Spark were in the latter's office discussing ship's business. Appellant appeared at the door to the room and said to Mr. Spark, "I'll beat your brains out when I get you ashore". Later, Mr. Kahler saw Appellant standing at the gangway and when he asked him what he was doing there, Appellant replied that he was waiting for the Chief Officer to come.

On 8 January 1966, Mr. Kahler was told that Appellant was in the crow's mess giving alcoholic beverages to members of the galley staff. Mr. Kahler went down to the mess and observed Appellant and some unlicensed crewmembers drinking beer. Appellant was telling these crewmembers that they didn't have to take any more orders from the officers; that they were just as good as the officers were. Possession of alcoholic beverages, including beer, was prohibited aboard the vessel.

Able Seaman Mozley stated he once heard Appellant tell a steward that he would not take orders from any white man, and on two occasions Appellant told various crewmembers to put in all the overtime they could whether it was deserved or not.

On 10 January 1966, Appellant was proceeding down the gangway when he turned around and told Mr. Mozley that he was going to beat him up when he got ashore.

On 9 January 1966, Appellant stated, in essence, that he did not like the white men on the ship. Crewmember Masslock replied to this in a somewhat vulgar manner. Masslock then turned his back to Appellant to sit down and Appellant struck him on the back of the head. When Appellant was through with him Masslock was seen with blood all over his face, his nose appeared broken, his clothes were torn and bloody, and he had to be hospitalized for ten days.

The record indicates that Appellant is approximately six feet tall and weighs about two hundred and thirty-five pounds.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

1. The absence of log entries and arrest or conviction records means all the charges must fail.
2. There is no jurisdiction in these proceedings for misconduct taking place on a dock.

### OPINION

The testimony of witnesses -- those who appeared at the hearing and those who responded to depositions -- constituted reliable and substantial evidence proving Appellant's misconduct. The Examiner found seven of the original eighteen specifications not proved. His decision as to the remaining specifications is found correct and is affirmed.

The absence of log entries in evidence is not controlling in these proceedings when, as here, other substantial proof of the offenses is introduced. The same is true, of course, for other documents. Appellant's contention that, under 46 USC §703, proper log entries relating to certain offenses enumerated in the proceeding Code section must be produced or the charges will be dismissed, misses the mark. First, none of the acts of misconduct proved against Appellant are listed in the referenced statute. Second, 46 USC 701 is a penalty and forfeiture statute, and has no application to the present administrative, remedial proceeding. See Appeal No. 1120. As stated in The Sharon, 52 F.2d 481:

"The purpose of [46 USC 701, 702] is to protect seaman against arbitrary and unwarranted acts and oppression by the master, not to aid a seaman in taking advantage of his own wrongdoing."

There is no question of jurisdiction here, as Appellant was acting under authority of his document and in the service of the ship while ashore.

### ORDER

The order of the Examiner dated at New York City, New York on 14 October 1966, is AFFIRMED.

P.E. TRIMBLE  
Vice Admiral, U.S. Coast Guard  
Acting Commandant

Signed at Washington, D.C., this 18th day of May 1967.

### INDEX

Arrest

Misconduct found without record of

Conviction

Misconduct found without record of

Jurisdiction

Acting under authority of license

Ashore

Log entries

Absence of as a defense

Misconduct

Ashore

Proven without arrest or conviction records or log entries

Proof

Misconduct found without arrest or court records or log entries